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Trivia From the Supreme Court Order List

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Trivia from the Supreme Court order list

Anybody can read the Supreme Court's *opinions*, but the real nerds read the order list. Here is an order from the Court's January 19, 2010 [list](#):

Linton v. United States, No.09-7408 - The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *United States v. Booker*, 543 U.S. 220 (2005).

Does anything about that seem strange? Yes, you read it correctly, last month the Supreme Court issued a GVR (grant-vacate-remand) in light of a case decided five years ago. Had the Fourth Circuit somehow not heard of *Booker*? How could that be? Answer below the fold . . .

The Court ordinarily uses its GVR power to direct lower courts to reconsider a case in light of a new development that followed the lower court's decision. Although it wouldn't be unprecedented for the Court to issue a GVR in light of a case decided before the lower court ruled, especially where the lower court seemed unaware of the Supreme Court precedent, that isn't exactly what happened here.

What happened is that Linton had previously appealed his conviction and sentence to the Fourth Circuit, the Fourth Circuit affirmed, and then Linton's appointed counsel failed to file a petition for certiorari when he or she was supposed to, which violated Linton's rights under the Criminal Justice Act. All of that was years ago. In the new litigation, Linton filed a 2255 motion for resentencing, which the Fourth Circuit construed as a motion to recall its earlier mandate. The Fourth Circuit granted the motion, recalled the mandate, and entered a new judgment in July 2009, so that Linton could file a timely petition for certiorari. And then he got a GVR. Now we'll see what the Fourth Circuit does with it. In a prior case that presented similar circumstances, the Fourth Circuit remanded to the district court for resentencing, but there's no guarantee that will happen here.

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